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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,708	03/06/2002	Hansen Yuan	2153 CIP DIV	7922
530	7590	12/13/2005	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			REIMERS, ANNETTE R	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,708

Applicant(s)

YUAN ET AL.

Examiner

Annette R. Reimers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2005 and 02 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-20, 22-35, 37, 39, 40 and 69-71 is/are pending in the application.
- 4a) Of the above claim(s) 7, 8, 14, 19, 23-35, 37, 39 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9, 11-13, 15-18, 20, 22 and 69-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species IV, Figures 11, 12A, 13 and 14A-14C (Screw Combination) in the reply filed on September 2, 2005 is acknowledged.

Examiner further acknowledges that applicant believes that claims 1-6, 9, 11-18, 20, 22, 24-26, 29, 32-35, 37, 39 and 69-71 read on the elected species, figures 11, 12A, 13 and 14A-14C (Screw Combination). Examiner agrees with applicant regarding all of the claims except 14, 24-26, 29, 32-35, 37 and 39. The elected species, figures 11, 12A, 13 and 14A-14C (Screw Combination), does not have a fastener portion configured as a hook, as required by claim 14. Regarding claims 24-26, 29, 32-35, 37 and 39, the elected species, figures 11, 12A, 13 and 14A-14C (Screw Combination), does not have a fastener portion formed monolithic with and depending from the head portion, as required by claim 24.

Claims 7-8, 14, 19, 23-35, 37 and 39-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 2, 2005.

Allowable Subject Matter

The indicated allowability of claims 12, 19, 27, 28, 30, 31, 34, 35 and 40 is withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 9, 11-13, 15-18, 20, 22 and 69-71 are rejected under 35 U.S.C. 102(e) as being anticipated by Sherman et al. (US Patent Number 5,885,286).

Sherman et al. disclose various embodiments of a device for securing a spinal rod to the spine comprising a head portion, 112, having a channel extending therethrough configured to receive a spinal rod; a locking cap, 114 and 113, configured to engage an interior camming surface of the channel and an exterior surface of the spinal rod upon rotation of the locking cap relative to the head portion through a 90° arc from an unlocked position to a locked position to secure the position of the head portion relative to the spinal rod, wherein the locking cap has discontinuous opposed arcuate engagement flanges, 155; and a fastener portion, 111, depending from the head portion, wherein the fastener portion is movable relative to the head portion when the locking cap is in the unlocked position and the fastener portion is fixed relative to the head portion when the locking cap is in the locked position (see figure 8).

The channel of the head portion is bounded by opposed sidewalls, wherein each of the opposed sidewalls has an arcuate engagement slot defined therein (see figures 5

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and 8). The discontinuous opposed arcuate engagement flanges are configured for reception in the opposed arcuate engagement slots of the head portion upon rotation of the locking cap relative to the head portion (see figure 8). The opposed engagement slots are each defined in part by inclined slot surfaces, with the angle of the inclined slot surface of one engagement slot being opposite that of the opposed engagement slot, and wherein the opposed engagement flanges are each defined in part by inclined flange surfaces, with the angle of the inclined flange surface of one engagement flange being opposite that of the opposed engagement flange (see figure 8). The inclined slot surfaces and the inclined flange surfaces are angularly tapered to complement each other (see figure 8).

The locking cap is capable of rotation between an initial position in which the arcuate engagement flanges are 90° out of phase with the arcuate engagement slots, an intermediate position in which the arcuate engagement flanges are 45° out of phase with the arcuate engagement slots and a locked position in which the arcuate engagement flanges are in phase and intimately engaged with the arcuate engagement slots (see figure 8). A bottom surface of the locking cap includes elongate recess, 59, oriented to accommodate a spinal rod when the locking cap is in the initial position (see figure 8). The locking cap has a cylindrical head, which includes a hexagonal bore, 157, for receiving a work implement (see figure 8).

Response to Arguments

Applicant's arguments with respect to claims 1-9, 11-20, 22-35 and 37, and 39-40 filed on March 8, 2005 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDUARDO C. ROBERT
PRIMARY EXAMINER